C. Taylor Ashworth, AZ Bar No. 10143
Christopher Graver, AZ Bar 13235
Josh Kahn, AZ Bar No. 26284
STINSON MORRISON HECKER LLP
1850 N. Central Avenue, Suite 2100
Phoenix, Arizona 85004-4584
Tel: (602) 279-1600
Fax: (602) 240-6925
jkahn@stinson.com

Alexander Terras
REED SMITH LLP
10 S. Wacker Drive, Suite 4000
Chicago, Illinois 60606
Tel: (312) 207-3870
Fax: (312) 207-6400
aterras@reedsmith.com

Proposed Attorneys for Debtors and Debtors-in-Possession

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF ARIZONA

In re ARETE HOLDINGS, LLC, Debtor.	Chapter 11 Case No. 2:11-bk-02009-RTB (Joint Administration Pending) Case No. 2:11-bk-02010; Case No. 2:11-bk-02011; Case No. 2:11-bk-02012; and Case No. 2:11-bk-02020
This filing applies to: ■ All Debtors □ Arete Holdings, LLC □ Arete NW, LLC □ Arete Sleep, LLC □ Arete Sleep Therapy, LLC □ Arete Sleep Therapy NW, LLC	**DEBTORS' MOTION FOR INTERIM AND FINAL ORDERS PURSUANT TO 11 U.S.C. §§ 105 AND 364 APPROVING POST-PETITION FINANCING AND CONTINUING EXISTING CREDIT AGREEMENT** **Hearing Date:** **None** **Hearing Time:** **Location:** **Courtroom #703** **230 N First Ave** **Phoenix AZ 85003**

Areté Holdings, LLC, Areté NW, LLC, Areté Sleep, LLC, Areté Sleep Therapy, LLC, and Areté Sleep Therapy NW, LLC (collectively, the "Debtors"), Debtors and Debtors-In-Possession in the above-captioned matter, pursuant to 11 U.S.C. §§ 105 and 364, and Fed. R. Bankr. P 4001, move for entry of interim and final orders approving Debtors' continued use of an existing credit agreement as debtor-in-possession financing (the "DIP Financing"), to be used in the operation of the Debtors' businesses during the pendency of the Debtors' chapter 11 cases (collectively, the "Chapter 11 Cases"). The lender under the existing credit agreement and proposed DIP Financing is an insider of the Debtors, True North Partners, LLC ("True North"). Under the existing credit agreement, True North has agreed to make principal advances to the Debtors not to exceed $625,000.00, of which $200,000 was advanced pre-petition (the "DIP Loan"), secured by a lien on the Debtors' assets, subject and junior to any existing lien on those assets and any replacement liens granted to prepetition senior secured creditors as adequate protection. The relief requested herein is supported by the Declaration of Daniel Dempsey (the "Dempsey Declaration") filed contemporaneously herewith.

This Motion requests approval of an existing credit agreement with the Debtors' principal (True north), and treatment of the credit agreement, including the $200,000 advanced pre-petition, as DIP Financing. The DIP Financing is already secured by a lien on all of the Debtors' assets, and the Debtors are proposing to provide Truth North with a replacement lien over all of the Debtors' post-petition assets, which will be junior to any other replacement liens provided to other secured creditors as adequate protection for their interest in any of the Debtors' prepetition assets, to the extent such secured creditor holds a valid properly perfected prepetition secured claim with higher priority than True North.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

As indicated below, the Debtors engaged in an extensive prepetition marketing effort aimed at selling their business as a going concern. Immediately prior to the commencement of these Chapter 11 Cases, the Debtors entered into an Asset Purchase Agreement (the "Agreement") with Sleep Studies, Inc. (the "Proposed Purchaser"), pursuant to which the Debtors intend to sell substantially all of their assets as a going concern. After careful consideration, and in the exercise of their business judgment, the Debtors believe that the best alternative to maximize the return for their estates is to consummate the proposed sale of their assets to the Proposed Purchaser or a successful overbidder. In order for this to occur, the Debtors need immediate access to DIP Financing to fund their business pending completion of the anticipated sale.

The Debtors are suffering a cash crisis. According to the latest financial projections, the Debtors do not have sufficient cash on hand to pay for the on-going operation of their business through the closing date contemplated in the Agreement. The Debtors need immediate financing to allow them to remain in business pending a completion of the anticipated sale. The majority of the value of the Debtors' assets and business consists of general goodwill, including the Debtors' assembled workforce, reputation in the medical community, and existing customer base. Any cessation or interruption of current payment and services would substantially diminish or eliminate this general goodwill.

The proposed DIP lender, True North, is the sole member of Arete Holdings, LLC, which is the direct or indirect holder of not less than a 99% interest in each of the Debtors. On January 19, 2011, True North and the Debtors entered into a Secured Promissory Note (the "Note") and a Security Agreement (the "Security Agreement"), copies of which are attached hereto as **Exhibit A and B**, respectively. Pursuant thereto, Truth North has advanced $200,000 to Debtors pre-petition, secured by a blanket lien on Debtors' assets. True North has agreed to continue its credit agreement with Debtors and to provide debtor-in-possession financing to the Debtors in accordance with the terms of the Secured Promissory Note and the Security Agreement (hereinafter together, the "DIP Facility"). As demonstrated below, the terms of the DIP Facility negotiated by the Debtors are on the most favorable terms available to Debtors, are reasonable under the circumstances, and the Debtors believe that, given the notable absence of any alternative source of financing, approval of the DIP Facility is in the best interests of the Debtors and their bankruptcy estates. Consequently, the Debtors request that this Court enter interim and final relief approving the DIP Facility, and granting True North the protections requested in the Motion.

II. **II. FACTUAL BACKGROUND**

A. **Parties and Jurisdiction**

On January 26, 2011 (the "Petition Date"), the Debtors each filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. No request has been made for the appointment of a trustee or examiner and the Debtors continue to operate their business and to manage their assets as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Debtors have moved to jointly administer the Chapter 11 Cases.

This Court has jurisdiction to hear this Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

The statutory predicates for the relief requested herein are sections 105 and 364 of title 11 of the United States Code (the "Bankruptcy Code"), Rules 2002, 4001, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and the Local Rules for the United States Bankruptcy Court for the District of Arizona (the "Local Rules").

B. **The Debtors' Business and the Impetus for Filing the Chapter 11 Cases**

Since 2002, the Debtors have been a leading provider of integrated, high quality sleep medicine and total patient care services. Headquartered at 6263 N. Scottsdale Road, Suite 395, Scottsdale, Arizona, the Debtors operate nineteen sleep diagnostic clinics across Arizona, Oregon, Texas and Washington which generate annual gross revenues of approximately $18,000,000. Of these revenues, approximately: (i) 15% is attributable to federal Medicare and Medicaid reimbursements administered by the Centers for Medicare and Medicaid Services ("CMS"); (ii) 25% is attributable to state-managed Medicaid reimbursements, and (iii) 60% is attributable to reimbursements from private insurance companies and payments received directly from patients.

As of the Petition Date, the Debtors employed approximately 140 medical and non-medical professionals, and engaged the services of approximately 32 independent contractors, including eight medical directors and twenty-five reading physicians.

The Debtors specialize within the sleep disorder subset of the health care industry, and focus their business primarily on the provision of diagnostic procedures aimed at detecting sleep breathing disorders, the most common of which is obstructive sleep apnea. In addition to these diagnostic capabilities, the Debtors also offer therapy and treatment services for patients' sleep breathing disorders once diagnosed, including the provision of durable medical equipment such as continuous positive airway pressure devices ("CPAPs").

As detailed more fully in the Dempsey Declaration, on March 16, 2009, the Board of Directors (the "Board") for Areté Holdings, LLC ("Holdings") held a meeting to discuss the prospect of selling the Debtors' businesses and/or soliciting new equity investors. Following nearly eighteen months of concerted efforts at marketing the Debtors' assets for sale and/or soliciting interest from additional equity investors, the Debtors determined that their entry into the Agreement, subject to the submission of competing bids from other potential purchasers, represents the best opportunity to maximize the value of the Debtors' assets for the benefit of their estates and creditors.

Entry into the Agreement, however, has not remedied the Debtors' immediate need for additional financing. Indeed, the general market conditions of the sleep disorder diagnostic and treatment industry, together with the particular challenges faced by the Debtors as set forth in the Dempsey Declaration, have caused the Debtors to operate their business with a negative cash flow throughout 2010, thereby prompting significant liquidity problems[1].

In order to fund their ongoing business operations, and to preserve their going concern value, the Debtors have a critical need for the post-petition use of cash collateral and debtor-in-possession financing. Even taking existing cash collateral into account, the Debtors have insufficient funds to, among other things, obtain additional inventory and medical diagnostic supplies from their vendors, make payroll disbursements, and fund other routine operating costs. Indeed, access to immediately credit facility is necessary to permit the Debtors to continue conducting their business in the ordinary course without interruption until the completion of the proposed sale process.

Unfortunately, the negotiation of the Agreement, together with certain other delays beyond the control of the Debtors, have brought the Debtors' liquidity problems to a critical level. In fact, in order to sustain their business up to the Petition Date, the Debtors were required to take a pre-petition advance from True North under the Note and the Security Agreement in the amount of $200,000 (the "Pre-Petition Advance"). True North made the Pre-Petition Advance on the express condition that it would remain part of the DIP Facility, subject to court approval.

The Pre-Petition Advance was used to pay, *inter alia*, employee wage claims, payments under executory contracts which are crucial to the Debtors' business operations and which the Debtors intend

[1] The Debtors have a number of outstanding unsecured loans from True North, which have helped provide operating funds over the last several years. As of the Petition Date, True North's unsecured loans exceed several million dollars.

to assume pursuant to the terms of the Agreement, and professional fees directly related to the negotiation and preparation of documents directly related to the Chapter 11 Cases (i.e. the Agreement, the Debtors' schedules of assets and liabilities, etc.). As such, the Pre-Petition Advance was used exclusively to fund amounts that the Debtors: (i) would have paid in full as priority claims regardless of when these Chapter 11 Cases were filed, or (ii) would have paid as administrative expense claims had the filing of the Chapter 11 Cases not been delayed. The Pre-Petition Advance was not used to pay aged accounts payable of preferred creditors or the general unsecured claims of the Debtors' estates that would not have otherwise been entitled to priority or administrative status.

Debtors have made efforts to obtain financing on more favorable terms but were unsuccessful.

C. **Summary of the Terms of the Proposed Financing**

True North has agreed to lend up to $625,000 to the Debtors in accordance with the terms and conditions set forth in the DIP Facility. A summary of the key provisions of the proposed DIP Facility are as follows:

- Credit Amount and Availability: The DIP Facility provides for maximum advances of up to $625,000 in principal, including the Pre-Petition Advance. The amount available to Debtors post-petition will be $425,000.

- Use of Proceeds: The proceeds of the loans by True North shall be used to fund general operations of the Debtors in accordance with, and limited to the items set forth in, the budget (the "Budget") approved by True North. The proceeds may also be used to pay costs and expenses of the Debtors' respective legal, financial and other advisors incurred prior to the Petition Date.

- Interest: Advances made under the DIP Facility bear a non-default fixed interest rate of 8.6%.

- Funding Fee: Upon each advance, a funding fee of 1.0% of all disbursements made thereunder (the "Funding Fee") will be deemed additional principal under the Note and payable in accordance with the terms thereof.

- Liens and Priorities: Amounts payable under the DIP Facility shall be secured by a perfected lien on the "DIP Collateral," consisting of: the Debtors' personal and fixture property of every kind and nature including, without limitation, all furniture, fixtures, equipment, raw materials, inventory, or other goods, accounts, contract rights, rights to the payment of money, insurance refund claims and all other insurance claims and proceeds, tort claims, chattel paper, documents, instruments, securities and other investment property, deposit accounts and all general intangibles including, without limitation, all tax refund claims, license fees, patents, patent applications, trademarks, trademark applications, trade names, copyrights, copyright applications, rights to sue and recover for past infringement of patents, trademarks and copyrights, computer programs, computer software, engineering drawings, service marks, customer lists, goodwill, and all licenses, permits, agreements of any kind or nature pursuant to which any Debtor possesses, uses or has authority to possess or use property (whether tangible or intangible) of others or others possess, use or have authority to possess or use property (whether tangible or intangible) of the Debtors, and all recorded data of any kind or nature, regardless of the medium of recording including, without limitation, all software, writings, plans, specifications and schematics, which lien is junior to existing liens on the DIP Collateral that are valid and perfected and recorded as of the Petition Date.

- Payments: The loan does not require monthly or periodic payments, and instead provides for a balloon payment of all outstanding principal and interest owing under the Note due the earlier of: (i) 180 days from the effective date of the Note; (ii) the effective date of the Debtors' plan of reorganization; (iii) the closing date of any sale of substantially all of Debtors' assets pursuant to section 363 of the Bankruptcy Code; or (iv) the conversion or dismissal of the Debtors' bankruptcy cases. Notwithstanding the foregoing, the Debtors have the option, but are not required, to make monthly or interim payments under the DIP Facility until its maturity.

True North’s obligation to fund the DIP Facility is conditioned on the entry of an Order of the Court authorizing the DIP Facility in a form and substance satisfactory in all respects to True North.

D. **Benefit of Financing**

After reviewing the proposal submitted by True North, the Debtors determined, in the exercise of their business judgment, that the financing offered by True North was in the best interests of these estates. In the absence of immediate authorization for the entry into a debtor-in-possession financing facility, Debtors may be unable to meet payroll and continue operating, and will suffer immediate and irreparable harm, including loss of the opportunity to consummate a sale of their business as a going concern.

III. LEGAL ARGUMENT

Section 364(c) of the Bankruptcy Code requires notice and a hearing before a debtor-in-possession may obtain post-petition credit outside the ordinary course of business. The Debtors have filed this motion because they believe that the terms set forth in the DIP Facility provide the best financial resolution currently available to the Debtors. The DIP Facility offers financing at marketable rates and Debtors believe the proposal is competitive. Given the rates and the amount of security requested, together with the Debtors’ known assets and liabilities, the proposal may actually be more advantageous to the Debtors than is typical in the marketplace.

The Debtors have satisfied the provisions of § 364 and are entitled to the relief requested herein. Specifically, Courts have articulated a three-part test to determine whether a debtor is entitled to section 364(c) financing:

> (1) They are unable to obtain unsecured credit per 11 U.S.C. § 364(b), i.e., by allowing a lender only an administrative claim per 11 U.S.C. § 503(b)(1)(A);
>
> (2) The credit transaction is necessary to preserve the assets of the estate; and
>
> (3) The terms of the transaction are fair, reasonable, and adequate, given the circumstances of the debtor-borrower and the proposed lender.

In re Aqua Assocs., 123 B.R. 192, 195–96 (Bankr. E.D. Pa. 1991); *In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 37-39 (Bankr. S.D.N.Y. 1990).

Each of the elements of this test is satisfied in these cases. First, the Debtors are unable to obtain unsecured credit merely by allowing a lender an administrative expense. As set forth above, the Debtors were able to acquire emergency financing pre-petition, but only on a secured basis and only as part of the contemplated DIP Facility. As of the date of this Motion, no other proposals have come to light. The proposed financing is essential to the Debtors' ability to protect its assets and the timing of this proposed financing critical to the proposed sale contemplated in the Agreement. The Debtors have exercised sound business judgment in determining that a post-petition credit facility of this nature is not only desirable but is critical.

Moreover, the Debtors submit that a working capital facility of the type needed in these cases could not have been obtained on an unsecured basis. The potential sources of an adequate credit facility for the Debtors, obtainable quickly and on reasonable terms, were extraordinarily limited. In these circumstances, "[t]he statute imposes no duty to seek credit from every possible lender before concluding that such credit is unavailable." *Bray v. Shenandoah Fed. Sav. & Loan Ass'n (In re Snowshoe Co.)*, 789 F.2d 1085, 1088 (4th Cir. 1986). Rather, a debtor need only demonstrate "by a good faith effort that credit was not available without" the protections of section 364(c). *Id.* at 1088; *see also In re Plabell Rubber Prods., Inc.*, 137 B.R. 897, 900 (Bankr. N.D. Ohio 1992). Where there are few lenders likely able and/or willing to extend the necessary credit to the debtor, "it would be unrealistic and unnecessary to require [the debtor] to conduct an exhaustive search for financing." *In* *re Sky Valley, Inc.*, 100 B.R. 107, 113 (Bankr. N.D. Ga. 1988). Consequently, the Debtors' efforts to obtain financing from other parties satisfy the statutory requirement of section 364(c) of the Bankruptcy Code. *See, e.g.*, *Snowshoe*, 789 F.2d at 1088 (explaining that the fact that the trustee contacted other financial institutions in the immediate geographic area and was unsuccessful satisfied the requirements of section 364(c)); *In re 495 Central Park Ave. Corp.*, 136 B.R. 626, 630–31 (Bankr. S.D.N.Y. 1992) (explaining that unsuccessful attempts to secure financing from other sources justified senior priority loan under section 364); *Ames Dep't Stores*, 115 B.R. at 40 (explaining that debtors' discussions with four lenders satisfied the requirement of section 364 that the debtors were unable to obtain comparable financing on an unsecured basis); *In re Stanley Hotel, Inc.*, 15 B.R. 660, 663 (D. Colo. 1981) (finding that two national banks refusing to grant unsecured loans was sufficient to support conclusion that section 364(c) requirements was met).

Second, the DIP Financing is necessary to preserve assets of the Debtors' estates. No party in interest can seriously contend that the Debtors do not need immediate access to a working capital facility. Given the nature of the Debtors' business, it is crucial that the Debtors continue to function as a going concern. As such, in order to preserve the value of the Debtors' estates, access to substantial credit is necessary to meet the substantial day-to-day operating costs associated with the Debtors' payroll and other expenses. Access to sufficient cash, therefore, is critical to the continued viability of the Debtors' business. Even at this early stage of these Chapter 11 Cases, it is safe to say that the success of these cases depends on immediate access to the DIP Financing.

For these reasons, access to credit under the DIP Facility is critical to preserve the Debtors' assets by providing the Debtors with sufficient time to complete the contemplated sale of their assets to the Proposed Purchaser or another successful bidder. The Debtors cannot wait for the beneficial effects of the DIP Facility. Indeed, any substantial delay could have the same impact as denial of the Motion. The Debtors' need for access to the DIP Financing is immediate. Thus, the DIP Financing is necessary to preserve the going concern value of the Debtors' business.

Third, the terms of the DIP Financing are fair, reasonable and appropriate. The Debtors are unable to obtain unsecured credit allowable solely as an administrative expense. Entry into the DIP Facility reflects the exercise of sound and prudent business judgment by the Debtors. In the Debtors' considered business judgment, the DIP Facility is the best financing and, indeed, the only option available in the circumstances of these cases.

The proposed terms of the DIP Facility were negotiated between proposed counsel for the Debtors and counsel for True North. The terms are fair, reasonable and adequate in that the terms do not prejudice the powers and rights that the Bankruptcy Code confers for the benefit of all creditors, nor do they prevent motions by parties in interest from being decided on their merits. As contemplated by the policies underlying the Bankruptcy Code, the purpose of the DIP Facility is to enable the Debtors to maintain the value of their estates while completing the anticipated sale of their business. *See In re First South Sav. Ass'n*, 820 F.2d 700, 710–15 (5th Cir. 1987).

The Debtors believe that the various fees and charges required by True North under the DIP Facility are reasonable under the circumstances. Indeed, courts routinely authorize similar lender incentives beyond the explicit liens and other rights specified in § 364. *See, e.g., In re Defender Drug Stores, Inc.*, 145 B.R. 312, 316 (B.A.P. 9th Cir. 1992) (authorizing credit arrangements under section 364, including a lender "enhancement fee").

In addition, the security and priorities offered to True North as part of the DIP Facility are fair and reasonable. The DIP Facility provides True North with a secured claim junior to the secured claims of existing creditors. Accordingly, although the DIP Facility is secured, True North is not requiring a superpriority administrative expense claim, and the Debtors need not show adequate protection for the rights of existing prepetition or post-petition creditors. *See* 11 U.S.C. § 364(d).

Based on the foregoing, the Debtors believe that, in the exercise of their business judgment, the terms set forth in the DIP Facility are appropriate and reasonable, are in the best interests of the Debtors, their estates, and their creditors, and provide the best financial resolution currently available to the Debtors. Bankruptcy courts routinely defer to a debtor's business judgment on most business decisions, including the decision to borrow money. *See Group of Institutional Investors v. Chicago Mil. St. P. & Pac. Ry.*, 318 U.S. 523, 550 (1943); *In re Trans World Airlines, Inc.*, 163 B.R. 964, 974 (Bankr. D. Del 1994) (applying the business judgment standard for approving motion for debtor in possession financing.); *In re Simasko Prod. Co.*, 47 B.R. 444, 449 (D. Colo. 1985) ("Business judgments should be left to the board room and not to this Court"); *In re Lifeguard Indus., Inc.*, 37

B.R. 3, 17 (Bankr. S.D. Ohio 1983). More exacting scrutiny would slow the administration of the Debtors' estates and increase its cost, interfere with the Bankruptcy Code's provision for private control of administration of the estates, and threaten the court's ability to control a case impartially." *Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303, 1311 (5th Cir. 1985). Courts generally will not second-guess a debtor's business decisions when those decisions involve "a business judgment made in good faith, upon a reasonable basis, and within the scope of his authority under the Code." *In re Curlew Valley Assocs.*, 14 B.R. 507, 511-14 (Bankr. D. Utah 1981).

Finally, the Debtors submit that the DIP Loan is necessary to preserve the assets of the estate and the terms of the DIP Facility are fair, reasonable and adequate, given the circumstances of the debtor-borrower and the proposed lender. *See In re Aqua Assocs.*, 123 B.R. 192, 195–96 (Bankr. E.D. Pa. 1991); *In re Crouse Group, Inc.*, 71 B.R. 544, 549 (Bankr. E.D. Pa. 1987); *In re Ames Dept. Stores, Inc.*, 115 B.R. 34, 37-39 (Bankr. S.D.N.Y. 1990). Without the DIP Loan, the Debtors will be unable to meet their chapter 11 administrative obligations, forcing the Debtors to cease its orderly administration of its assets. A forced liquidation of the Debtors' estates would significantly impair the value of the Debtors' assets, destroy any possibility of an effective sale of the Debtors' assets, and severely prejudice the creditors of the estate.

IV. NOTICE

The Debtor will serve notice of this Motion upon: (i) the Office of the United States Trustee; (ii) the list of the Debtors' 20 largest unsecured creditors; (iii) counsel to True North; (iv) all parties known to the Debtors believed to be asserting a secured claim or interest against the Debtors' assets; and (v) those parties requesting notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested herein, the Debtor submits that no other or further notice is required.

V. NO PRIOR REQUEST

No previous request for the relief sought in this Motion has been made to this Court or any other court.

VI. CONCLUSION

The Debtors have satisfied the legal prerequisites to borrow in accordance with the terms set forth above. Debtors believe the terms are fair and reasonable and are in the best interests of the

Debtors' estates and that the Debtors should be granted authority to borrow funds on the basis described above.

Accordingly, the Debtors respectfully request that this Court authorize the Debtors to continue their credit agreement with True North and obtain post-petition financing in accordance with the terms and conditions of the DIP Facility and the proposed Order authorizing the DIP Loan.

WHEREFORE, the Debtors respectfully request the entry of an interim order substantially in the form attached hereto as **Exhibit C**, authorizing the Debtors to enter into the DIP Loan with True North, setting a final hearing the on the Motion, waiving the 14-day stay of Bankruptcy Rule 6004, and granting such other and further relief as is just and proper.

RESPECTFULLY SUBMITTED this January 26, 2011.

STINSON MORRISON HECKER LLP

By: /s/ Josh Kahn (#026284)

C. Taylor Ashworth
Christopher Graver
Josh Kahn
1850 N. Central Avenue, Suite 2100
Phoenix, Arizona 85004-4584
and
REED SMITH LLP
Alexander Terras
Proposed Attorneys for Debtors

COPY of the foregoing sent this January 26, 2011, to:
Office of the U.S. Trustee
230 N First Ave #204
Phoenix AZ 85003-1706

And the list of 20 largest creditors for each case, a list of which is attached hereto.

/s/ Rebecca J. McGee

EXHIBIT "A"

SECURED PROMISSORY NOTE

$625,000 Date: January __, 2011

FOR VALUE RECEIVED, Areté Sleep, LLC, Areté Sleep Therapy, LLC, Areté Holdings, LLC, Areté NW, LLC, and Areté Sleep Therapy NW, LLC, each a Delaware limited liability company with its principal place of business located at 6263 N. Scottsdale Road, Suite 395, Scottsdale, Arizona 85250 (collectively, and together with all successors and permitted assigns, the "Maker"), promises to pay to the order of the True North Partners, LLC, together with its respective successors and assigns (collectively, the "Payee"), or such other entity as the Payee may from time to time designate in writing, the aggregate principal sum of up to Six Hundred Twenty Five Thousand and no/100 Dollars ($625,000) in lawful money of the United States of America with interest thereon to be computed as set forth below.

1. Advances under this Note: Upon the further request of the Maker, and in the sole discretion of the Payee, Payee may make disbursements to the Maker not to exceed the aggregate principal balance stated above, and Payee shall record on Exhibit A annexed hereto (the "Grid") the date and amount of such disbursements, with such entries being deemed presumptive evidence of the advances made hereunder.

2. Payment of Principal and Interest. This Note shall accrue interest at a rate of eight and six tenths percent (8.6%) per annum (the "Contract Rate") commencing on the date of each advance recorded on the Grid, and extending through the date of repayment for each such advance. Maker shall be required to make no payment of principal or interest due under the Note until the Maturity Date, as defined herein, at which time Maker shall pay Payee all principal, accrued interest and any other amounts outstanding under this Note. Interest on the principal balance of this Note shall be calculated on a monthly basis using, as the agreed method of calculation, an actual/365 day formula. Such formula shall use, as the numerator, the actual number of days elapsed in each month and, as the denominator, 365 days.

If at any time Payee receives, from Maker or otherwise, any amount applicable to the Debt (as hereinafter defined) which is less than all amounts due and payable at such time, Payee may apply that payment to amounts then due and payable in any manner and in any order determined by Payee, in Payee's sole discretion. Payee shall, however, be under no obligation to accept any amount less than all amounts then due and payable. Maker agrees that neither Payee's acceptance of a payment from Maker in an amount that is less than all amounts then due and payable nor Payee's application of such payment shall constitute or be deemed to constitute either a waiver of the unpaid amounts or an accord and satisfaction. This provision shall control notwithstanding any inconsistent direction by Maker or any other obligor hereunder.

The whole of the principal sum of this Note, together with all interest accrued and unpaid thereon and all other sums due under this Note (all such sums hereinafter collectively referred to as the "Debt") shall become immediately due and payable at the option of Payee upon the earliest of: (i) 180 days from execution of this Note; (ii) the effective date of any plan of reorganization confirmed by the Maker in the context of any bankruptcy cases (collectively, the "Bankruptcy Cases") filed by Maker under chapter 11 of title 11 of the United States Code (the

"Bankruptcy Code"); (iii) the closing date of any sale of all or substantially all of Maker's assets under section 363 of the Bankruptcy Code or otherwise; or (iv) the conversion or dismissal of the Bankruptcy Cases. Notwithstanding anything to the contrary contained herein, all reasonable and necessary costs of collection incurred by Payee after an Event of Default, as that term is defined in section 13 below, shall constitute additional Debt under the terms of this Note.

3. Funding Fee. Upon the funding of any principal sum under this Note, there shall be added to the amount of such advance a funding fee in an amount equal to 1.00% of the amount of new principal advanced by the Payee on such date, which amount shall constitute additional principal under the terms hereof.

4. No Prepayment Restrictions. Maker shall be permitted to make prepayments on this Note without penalty or premium.

5. Late Charges; Default Rate.

(a) Time is of the essence hereof. If any sum due under this Note is not received within ten (10) days after its due date, the Maker agrees to pay, in addition to the amount of each such sum, a late payment charge of five percent (5%) of the amount of said sum, but not exceeding any lawful maximum.

(b) If (i) Maker fails to make payment of any amount due hereunder within ten (10) days after the same becomes due and payable; or (ii) Maker is in default under, or fails to perform under any term or condition contained in this Note, then the entire principal sum remaining unpaid, together with all accrued interest thereon and any other sum payable under this Note or the Security Agreement (as hereinafter defined), at the election of Payee, shall immediately become due and payable, with interest thereon at the lesser of eighteen percent (18.0%) per annum or the highest rate not prohibited by applicable law from the date of such accelerated maturity until paid (both before and after any judgment) (the "Default Rate"). This charge shall be part of the Debt, and shall be deemed secured by the Security Agreement (as hereinafter defined). This clause, however, shall not be construed as an agreement or privilege to extend the date of the payment of the Debt, nor as a waiver of any other right or remedy available to Payee by reason of the occurrence of any Event of Default.

6. Security for Credit. This Note shall be secured by that certain Security Agreement of even date herewith between Maker and Payee (the "Security Agreement").

7. Amendments. This Note may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Maker or Payee, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

8. Construction. Whenever used, the singular number shall include the plural, the plural the singular, and the words "Payee" and "Maker" shall include their respective successors, assigns, heirs, executors and administrators.

9. Waivers. Maker and all others who may become liable for the payment of all or any part of the Debt do hereby severally waive presentment and demand for payment, protest and acceleration of the maturity hereof (upon the occurrence of a default after giving effect to applicable notice and cure periods). No release of any security for the Debt or extension of time for payment of this Note or any installment hereof and no alteration, amendment or waiver of any provision of this Note made by agreement between Payee and any other person or party shall release, modify, amend, waive, extend, change, discharge, terminate or affect the liability of Maker and any other who may become liable for the payment of all or any part of the Debt under this Note.

10. Authority. Maker (and the other undersigned representative of Maker, if any) represents that such Maker has full power, authority and legal right to execute, deliver and perform its obligations pursuant to this Note and that this Note constitutes a valid and binding obligation of such Maker.

11. Time. Time is of the essence of this Note.

12. Replacement Note. In the event of the loss, theft or destruction of this Note, upon Maker's receipt of a reasonably satisfactory indemnification agreement executed in favor of Maker by Payee or in the event of the mutilation of this Note, upon the surrender of the mutilated Note by Payee to Maker, Maker shall execute and deliver to Payee a new note in form and content identical to this Note in lieu of the lost, stolen, destroyed or mutilated Note.

13. Event of Default. An "Event of Default" shall be deemed to have occurred under this Agreement upon: (a) the failure by Maker to perform in a full and timely manner any of its obligations under this Note, including without limitation, the failure to timely make any payment due and owing thereunder; (b) the occurrence of any default under the Security Agreement, (c) the appointment of a trustee or examiner with expanded powers, or dismissal or conversion of any bankruptcy case filed by the Makers; (d) confirmation of any plan of reorganization or liquidation in any bankruptcy case other than a plan of reorganization satisfactory to Payee in its sole discretion; (e) filing of a Chapter 11 plan of reorganization or liquidation by a person or entity other than Maker that does not require the payment in full, on the effective date thereof, of all extensions of credit under this Note; (f) failure to obtain entry of a final order approving the Asset Purchase Agreement from the Bankruptcy Court having jurisdiction over the cases by April 15, 2011; (g) amendment (other than as consented by the Payee) or stay of either the interim or final Bankruptcy Court Order approving this Note or reversal, modification, or vacation of either of such Orders, whether on appeal or otherwise; (h) any Maker seeking any financing under Section 364(d) of the Bankruptcy Code secured by any DIP collateral that does not require the payment in full of all extensions of credit under this Note; or (i) cessation by Makers of all or any material part of their business operations (other than in any connection with a sale of assets consented to by the Payee) or (j) failure to obtain entry of a final order approving the Makers' Motion for Interim and Final Orders Pursuant to 11 U.S.C. Section 105 and 364 Approving Post-Petition Financing by April 30, 2011, which order shall be in a form satisfactory to Payee and shall contain, among other provisions, determination that (i) Payee shall be entitled to the protections afforded pursuant to Section 364(3), (ii) that Rule 6004 is inapplicable to the approval order, and (iii) that any pre-petition advance requested by Makers and disbursed by Payee shall be deemed a post-petition advance.

14. Notice. All notices required to be given by either party to the other party under this Note shall be in writing and shall be effective when actually delivered or when deposited in the United States Mail, first class, postage prepaid, addressed to the other party at the addresses set forth in the head of this Agreement or such other address as either party shall otherwise designate to the other party in writing.

15. Forbearance. Any forbearance by Payee in exercising any right or remedy under this Note or otherwise afforded by applicable law shall not be a waiver of or preclude the exercise of that or any other right or remedy. The acceptance by Payee of any payment after the due date of such payment or in an amount which is less than the required payment shall not be a waiver of Payee's right to require prompt payment when due of all other payments or to exercise any right or remedy with respect to any failure to make prompt payment. Enforcement by Payee of any security for Maker's obligations under this Note shall not constitute an election by Payee of remedies so as to preclude the exercise of any other right or remedy available to Payee.

16. Section Headings. The Section headings inserted in this Note have been included for convenience only and are not intended and shall not be construed to limit or define in any way the substance of any section contained herein.

17. Governing Law. This Note shall be governed and construed in accordance with the internal laws of the State of Arizona and the applicable laws of the United States of America.

18. Consent to Jurisdiction. MAKER AND PAYEE HEREBY CONSENT TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED WITHIN THE STATE OF ARIZONA, AND IRREVOCABLY AGREE THAT ALL ACTIONS OR PROCEEDINGS ARISING OUT OF OR RELATING TO THIS NOTE SHALL BE LITIGATED IN SUCH COURTS.

19. Waiver of Jury Trial. MAKER AND PAYEE WAIVE THEIR RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS NOTE. MAKER ANY PAYEE ACKNOWLEDGE THAT THIS WAIVER IS A MATERIAL INDUCEMENT FOR MAKER AND PAYEE TO ENTER INTO A BUSINESS RELATIONSHIP, THAT MAKER AND PAYEE HAVE RELIED ON THE WAIVER IN ENTERING INTO AND MAKING THE LOAN EVIDENCED UNDER THIS NOTE, AND THAT EACH WILL CONTINUE TO RELY ON THE WAIVER IN THEIR RELATED FUTURE DEALINGS. MAKER AND PAYEE FURTHER WARRANT AND REPRESENT THAT THEY HAS REVIEWED THIS WAIVER WITH LEGAL COUNSEL, AND THAT THEY KNOWINGLY AND VOLUNTARILY WAIVE THEIR JURY TRIAL RIGHTS.

[Signature Page to Follow]

IN WITNESS WHEREOF, Maker has duly executed and delivered this Secured Promissory Note the day and year first above written.

MAKER:

ARETÉ SLEEP, LLC,

By: [signature]
Name: Anthony Baumann
Its: President

ARETÉ SLEEP THERAPY, LLC

By: [signature]
Name: Anthony Baumann
Its: President

ARETÉ HOLDINGS, LLC

By: [signature]
Name: Anthony Baumann
Its: President

ARETÉ NW, LLC

By: [signature]
Name: Anthony Baumann
Its: President

ARETÉ SLEEP THERAPY NW, LLC

By: [signature]
Name: Anthony Baumann
Its: President

ACCEPTED BY PAYEE:

TRUE NORTH PARTNERS, LLC

By: [signature]
Name: MICHAEL PIERCE
Its: PARTNER

EXHIBIT "B"

SECURITY AGREEMENT

This Security Agreement ("Agreement") is entered into as of the 19th day of January, 2011, by and between Areté Sleep, LLC, Areté Sleep Therapy, LLC, Areté Holdings, LLC, Areté NW, LLC, and Areté Sleep Therapy NW, LLC, each a Delaware limited liability company with a principal place of business located at 6263 N. Scottsdale Road, Suite 395, Scottsdale, Arizona 85250 (collectively, and together with all successors and permitted assigns, the "Debtors") and True North Partners, LLC, a Delaware limited liability company ("Secured Party").

RECITALS:

WHEREAS, the Debtors are engaged in the business of owning and operating nineteen sleep health centers and diagnostic testing facilities and renting and selling durable medical equipment within the states of Arizona, Oregon, Texas and Washington;

WHEREAS, the Debtors have each filed, or intend to file, a voluntary petition (the "Petitions") for relief commencing cases (the "Chapter 11 Cases") under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Arizona (the "Bankruptcy Court");

WHEREAS, the Debtors have entered into, or intend to enter into, an Asset Purchase Agreement with Heartland Health Therapy, Inc. ("Proposed Buyer") pursuant to which the Proposed Buyer agrees to purchase substantially all the Debtors' assets, subject to the submission of higher and better bids and approval by the Bankruptcy Court (the "Proposed Sale").

WHEREAS, in order for the Debtors to continue their business operations prior to the consummation of the Proposed Sale, thereby preserving the going-concern value of the Debtors' assets, the Debtors require access to, and use of, additional funds (the "Financing");

WHEREAS, Secured Party has agreed, subject to: (i) the terms of that certain Secured Promissory Note executed contemporaneously herewith (the "Note") and (ii) the terms of this Agreement, to provide Debtors with the Financing;

WHEREAS, Debtors have agreed to seek approval of the Bankruptcy Court of such Financing pursuant to the Debtors' Motion for Interim and Final Orders Pursuant to 11 U.S.C. §§ 105 and 364 Approving Post-Petition Financing

WHEREAS, Secured Party requires as a condition to the provision of such Financing, that Debtors secure their obligations under the Note by entering into this Agreement.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, the Debtors and Secured Party hereby agree as follows:

1. Certain Definitions.

(a) "Collateral" shall mean all of the Debtors' assets and rights, wherever located, whether now owned or hereafter acquired or arising, and all proceeds and products thereof, including but not limited to:

All personal and fixture property of every kind and nature including, without limitation, all furniture, fixtures, equipment, raw materials, inventory, or other goods, accounts, contract rights, rights to the payment of money, insurance refund claims and all other insurance claims and proceeds, tort claims, chattel paper, documents, instruments, securities and other investment property, deposit accounts and all general intangibles including, without limitation, all tax refund claims, license fees, patents, patent applications, trademarks, trademark applications, trade names, copyrights, copyright applications, rights to sue and recover for past infringement of patents, trademarks and copyrights, computer programs, computer software, engineering drawings, service marks, customer lists, goodwill, and all licenses, permits, agreements of any kind or nature pursuant to which any Debtor possesses, uses or has authority to possess or use property (whether tangible or intangible) of others or others possess, use or have authority to possess or use property (whether tangible or intangible) of the Debtors, and all recorded data of any kind or nature, regardless of the medium of recording including, without limitation, all software, writings, plans, specifications and schematics.

(b) "Lien" means any lien (statutory or other), mortgage, pledge, hypothecation, assignment, deposit arrangement, security interest, charge, claim or other encumbrance of any kind (including any conditional sale or other title retention agreement, any lease in the nature thereof, and any agreement to give any security interest) and any agreement to give or refrain from giving a lien, mortgage, pledge, hypothecation, assignment, deposit arrangement, security interest, charge, claim or other encumbrance of any kind.

(c) "Permitted Liens" means: (i) Liens and security interests which were valid, perfected, recorded and enforceable as of the Petition Date, and (ii) any other Liens created subsequent to the Petition Date to which the Secured Party has expressly consented in writing; and (iii) Liens in favor of Secured Party.

2. Security Agreement.

(a) Grant. Debtors, for valuable consideration, the receipt of which is acknowledged, hereby grant to the Secured Party a security interest in the Collateral now owned or at any time hereafter acquired by the Debtors or in which the Debtors now have, or at any time in the future may acquire, any right, title or interest. The foregoing security interest grant is intended to and shall serve as a Lien in all of the Collateral pursuant to Section 9-504 of the Uniform Commercial Code in effect from time-to-time in the State of Arizona.

(b) Debtors Remain Liable. Anything herein to the contrary notwithstanding, and except as contemplated in the Proposed Sale, (i) the Debtors shall remain liable under any contracts, agreements and other documents related to the Collateral, to the extent set forth therein, to perform all of its duties and obligations thereunder to the same extent as if this Agreement had not been executed, (ii) the exercise by Secured Party of any of the rights hereunder shall not release the Debtors from any of their duties or obligations under such contracts, agreements and other documents related to the Collateral and (iii) Secured Party shall not have any obligation or liability under any contracts, agreements and other documents related to the Collateral by reason of this Agreement, nor shall Secured Party be obligated to perform any of the obligations or duties of the Debtors thereunder or to take any action to collect or enforce any such contract, agreement or other document related to the Collateral.

(c) Continuing Security Interest. The Debtors agree that this Agreement shall create a continuing security interest in the Collateral which shall remain in effect until the indefeasible payment and performance in full of all of the Obligations.

3. Obligations Secured. The security interest granted hereby secures payment of all amounts owed pursuant to: (i) the Note; and (ii) this Agreement (collectively, the "Obligations").

4. Debtors' Representations, Warranties And Covenants. Debtors hereby represent, warrant and covenant to the Secured Party that:

(a) Debtors' principal place of business is the address set forth in Section 10(e) of this Agreement and Debtors keep all records concerning accounts, contract rights and other property at that location. Debtors are limited liability companies duly organized under the laws of the Delaware. Debtors will notify the Secured Party prior to changing either their form or jurisdiction of organization.

(b) Debtors will at all times keep in a manner reasonably satisfactory to the Secured Party accurate and complete records of the Collateral and will keep such Collateral insured to the extent similarly situated companies insure their assets. The Secured Party shall be entitled, at reasonable times and intervals after reasonable notice to Debtors, to enter Debtors' premises for purposes of inspecting the Collateral and Debtors' books and records relating thereto.

(c) Debtors will not create or permit to be created or suffer to exist any Lien, except Permitted Liens, of any kind on any of the Collateral.

(d) Other Financing Statements. Other than financing statements in favor of the Secured Party and/or evidencing the Permitted Liens, no effective financing statement naming the Debtors as debtors, assignors, grantors, mortgagors, pledgors or the like and covering all or any part of the Collateral is on file in any filing or recording office in any jurisdiction.

(e) Notices, Reports and Information. The Debtors will (i) notify the Secured Party of any material claim made or asserted against the Collateral by any person or entity and of any change in the composition of the Collateral or other event which could materially adversely affect the value of the Collateral or Secured Party's Lien thereon; (ii) furnish to the Secured Party such statements and schedules further identifying and describing the Collateral and such other reports and other information in connection with the Collateral as Secured Party may reasonably request, all in reasonable detail; and (iii) upon request of Secured Party, make such demands and requests for information and reports as the Debtors are entitled to make in respect of the Collateral.

(f) Disposition of Collateral. Except as provided in the Proposed Sale, the Debtors will not surrender or lose possession of (other than to the Secured Party), sell or otherwise dispose of or transfer any of the Collateral or any right or interest therein, except to the extent permitted by this Agreement.

(g) Separate Obligations and Liens. The Debtors acknowledge and agree that: (i) the Obligations represent indebtedness, obligations and liabilities of the Debtors to Secured Party, which the Debtors are obligated to pay and perform, in each case regardless of whether or not any indebtedness, obligation or liability to any other person or entity, or any agreement, instrument or guaranty that evidences any such other indebtedness, liability or obligation, or any provision thereof, shall for any reason be or become void, voidable, unenforceable or discharged, whether by payment, performance, avoidance or otherwise; (ii) the Lien that secures the Obligations (A) is separate and distinct from any and all other Liens on the Collateral, (B) is enforceable without regard to whether or not any other Lien shall be or become void, voidable or unenforceable or the indebtedness, obligations or liabilities secured by any such other Lien shall be discharged, whether by payment, performance, avoidance or otherwise, and (C) shall not merge with or be impaired by any other Lien.

5. Financing Statements. Debtors shall execute any financing statement, in respect of any security interest created pursuant to this Agreement which may at any time be required or which, in the opinion of the Secured Party, may at any time be desirable. If any recording or filing thereof (or the filing of any statements of continuation or assignment of any financing statement) is required to protect and preserve such lien or security interest, Debtors shall execute the same at the time and in the manner requested by the Secured Party. To the fullest extent permitted by applicable law, the Debtors authorize Secured Party, and any agent acting on behalf of Secured Party, to file any such financing statements without the signature of the Debtors.

6. Debtors' Rights Until Default. So long as an Event of Default does not exist, Debtors shall have the right to possess the Collateral, manage their property and sell its inventory in the ordinary course of business.

7. Event of Default. An "Event of Default" shall exist under this Agreement upon the happening of any of the following events or conditions, without demand or notice from Secured Party:

(a) failure to observe or perform any of its agreements, warranties, representations or covenants in this Agreement, which failure is not cured within 30 days after receipt of written notice thereof from a Secured Party to the Debtors.

(b) Except as provided for in the Proposed Sale, Debtors, without the prior written consent of Secured Party, attempts to or do sell, rent, lease, license, mortgage, grant a Lien in, or otherwise transfer or encumber the Collateral (except for the Permitted Liens).

(c) A default or event of default under the Note.

8. Rights and Remedies on Event of Default.

(a) Subject to the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure, during the continuance of an Event of Default, Secured Party, shall have the right, with or without notice to Debtors (as provided below), as to any or all of the Collateral, by any available judicial procedure, or without judicial process (provided, however, that it is in compliance with the UCC), to exercise any and all rights afforded to a secured party under the UCC or other applicable law.

(b) All of Secured Party's rights and remedies with respect to the Collateral, whether established hereby or by any other agreements, instruments or documents or by law shall be cumulative and may be exercised singly or concurrently.

9. Secured Party's Rights; Debtors' Waivers.

(a) Secured Party's acceptance of partial or delinquent payment or Secured Party's failure to exercise any right hereunder, shall not constitute a waiver of any obligation of Debtors hereunder, or any right of Secured Party hereunder, and shall not affect in any way the right to require full performance at any time thereafter.

(b) The Debtors waive, to the fullest extent permitted by law, (i) any right of redemption with respect to the Collateral, whether before or after sale hereunder, and all rights, if any, of marshaling of the Collateral or other collateral or security for the Obligations; and (ii) any right to require Secured Party (A) to proceed against any person or entity, (B) to exhaust any other collateral or security for any of the Obligations, (C) to pursue any remedy in Secured Party's power, or (D) to make or give any presentments, demands for performance, notices of nonperformance, protests, notices of protests or notices of dishonor in connection with any of the Collateral.

10. Miscellaneous.

(a) Amendment and Waiver. Neither this Agreement nor any part hereof may be changed, waived, or amended except by an instrument in writing signed by Secured Party and by Debtors; and waiver on one occasion shall not operate as a waiver on any other occasion.

(b) Notices. Unless otherwise provided, any notice required or permitted under this Agreement shall be given in writing and shall be deemed effectively given upon personal delivery to the party to be notified or upon deposit with the United States Post Office, by registered or certified mail, postage prepaid and addressed to such party at the address set forth below, or at such other address as such party may designate by ten (10) days' advance written notice to the other parties.

(c) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of, the successors and assigns of the parties hereto. Debtors may not assign their rights or obligations under this Agreement without the prior written consent of Secured Party, which consent may be withheld in its sole discretion. Secured Party may assign any of its rights and obligations under this Agreement to any third party and Debtors shall be required to perform their obligations under this Agreement in favor of such assignee in the same manner and to the same extent. Debtors further waive their right to assert any defenses against such third party assignee that they may otherwise have available to them against Secured Party prior to such assignment.

(d) Governing Law. The laws of the State of Arizona shall govern the construction of this Agreement, without giving effect to the principles of conflicts of laws thereof.

(e) Notice. Except as otherwise provided herein, whenever it is provided herein that any notice, demand, request, consent, approval, declaration or other communication shall or may be given to or served upon any of the parties by another, or whenever any of the parties desires to give or serve upon another any communication with respect to this Agreement, each such notice, demand, request, consent, approval, declaration or other communication shall be in writing and shall be sent via UPS, FedEx or other overnight messenger service, first class registered or certified mail, postage prepaid, return receipt requested, to the parties hereto at the following addresses:

If to Secured Party:

True North Partners, LLC
8455 North 90th Street, Suite #4
Scottsdale, AZ 85258

If to Debtors:

Areté Holdings, LLC
6263 N. Scottsdale Road, Suite 395
Scottsdale, Arizona 85250

and

Alexander Terras
c/o Reed Smith LLP
10 S. Wacker Drive, Suite 4000
Chicago, Illinois 60606

or at such other address as may be substituted by notice given as herein provided. The giving of any notice required hereunder may be waived in writing by the party entitled to receive such notice. Failure or delay in delivering copies of any notice, demand, request, consent, approval, declaration or other communication to the persons designated above to receive copies shall in no way adversely affect the effectiveness of such notice, demand, request, consent, approval, declaration or other communication.

(f) Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

(g) Titles and Subtitles. The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

(h) Severability. If one or more provisions of this Agreement are held to be unenforceable under applicable law, such provision shall be excluded from this Agreement and the balance of the Agreement shall be interpreted as if such provision were so excluded and shall be enforceable in accordance with its terms.

(i) Venue. Debtors and Secured Party agree that all actions or proceedings arising in connection with this Agreement shall be tried and litigated in any court in which Secured Party determines it is necessary or appropriate to initiate legal or equitable proceedings in order to exercise, preserve, protect or defend any of Secured Party's rights and remedies hereunder or otherwise or to exercise, preserve, protect or defend the Secured Party's Lien, and the priority thereof, against the Collateral, and which has subject matter jurisdiction over the matter in controversy. The choice of forum set forth herein shall not be deemed to preclude the enforcement of any judgment obtained in such forum, or the taking of any action hereunder to enforce the same, in any appropriate jurisdiction.

(j) Waiver of Jury Trial. TO THE EXTENT EACH MAY LEGALLY DO SO, EACH PARTY HERETO HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION, CAUSE OF ACTION, OR PROCEEDING ARISING UNDER OR WITH RESPECT TO THIS AGREEMENT, OR IN ANY WAY CONNECTED WITH, OR RELATED TO, OR INCIDENTAL TO, THE DEALING OF THE PARTIES HERETO WITH RESPECT TO THIS AGREEMENT, OR THE TRANSACTIONS RELATED THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND IRRESPECTIVE OF WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE. TO THE EXTENT EACH MAY LEGALLY DO SO, EACH PARTY HERETO HEREBY AGREES THAT ANY SUCH CLAIM, DEMAND, ACTION, OR PROCEEDING SHALL BE DECIDED BY A COURT TRIAL WITHOUT A JURY AND THAT EITHER PARTY HERETO MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF ANY OTHER PARTY HERETO TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY.

IN WITNESS WHEREOF, this Security Agreement has been executed by the parties hereto as of the date first above written.

DEBTORS:

ARETE SLEEP, LLC,
By: [signature]
Name: Anthony Baumann
Its: President

ARETE SLEEP THERAPY, LLC
By: [signature]
Name: Anthony Baumann
Its: President

ARETÉ HOLDINGS, LLC
By: [signature]
Name: Anthony Baumann
Its: President

ARETÉ NW, LLC
By: [signature]
Name: Anthony Baumann
Its: President

ARETÉ SLEEP THERAPY NW, LLC
By: [signature]
Name: Anthony Baumann
Its: President

SECURED PARTY:

TRUE NORTH PARTNERS, LLC

By: [signature]
Name: MICHAEL PIERCE
Its: PARTNER

EXHIBIT "C"

C. Taylor Ashworth, AZ Bar No. 10143
Christopher Graver, AZ Bar No. 013235
Josh Kahn, AZ Bar No. 26284
STINSON MORRISON HECKER LLP
1850 N. Central Avenue, Suite 2100
Phoenix, Arizona 85004-4584
Tel: (602) 279-1600
Fax: (602) 240-6925
cgraver@stinson.com

Alexander Terras
REED SMITH LLP
10 S. Wacker Drive, Suite 4000
Chicago, Illinois 60606
Tel: (312) 207-3870
Fax: (312) 207-6400
aterras@reedsmith.com

Proposed Attorneys for Debtors and Debtors-in-Possession

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF ARIZONA

In re ARETE HOLDINGS, LLC, Debtor.	Chapter 11 Case No. 2:11-bk-02009-RTB (Joint Administration Pending) Case No. 2:11-bk-02010; Case No. 2:11-bk-02011; Case No. 2:11-bk-02012; and Case No. 2:11-bk-02020
This filing applies to: ■ All Debtors ☐ Arete Holdings, LLC ☐ Arete NW, LLC ☐ Arete Sleep Therapy NW, LLC ☐ Arete Sleep, LLC ☐ Arete Sleep Therapy, LLC	**INTERIM ORDER PURSUANT TO 11 U.S.C. §§ 105 AND 364 APPROVING POST-PETITION FINANCING; CONTINUING EXISTING CREDIT AGREEMENT; AND SETTING A FINAL HEARING** **Hearing Date:** **January 27, 2011** **Hearing Time:** **10:00 a.m.** **Location:** **Courtroom #703** **230 N First Ave** **Phoenix AZ 85003**

THIS MATTER having come before the Court upon the motion (the "Motion")[1] of Areté Holdings, LLC, Areté NW, LLC, Areté Sleep, LLC, Areté Sleep Therapy, LLC, and Areté Sleep

[1] All capitalized terms used and not defined herein shall have the meanings ascribed to them in the Motion.

Therapy NW, LLC (collectively, the "Debtors"), Debtors and Debtors-In-Possession in the above-captioned matter, filed the above-captioned cases requesting entry of an Order approving the Debtors' continued use of an existing credit agreement with True north Partners, LLC ("True North") as debtor-in-possession financing; due and proper notice of the Motion having been given; and this Court being fully advised in the premises; it is hereby provisionally found and determined that:

1. On January 26, 2011 (the "Petition Date"), the Debtors each filed a voluntary petition for reorganization pursuant to Chapter 11 of Title 11, United States Code (the "Bankruptcy Code"). The Debtors have continued in possession of their assets and in the management of their business pursuant to Sections 1107 and 1108 of the Bankruptcy Code, and no trustee or examiner has been appointed in this case.

2. This Court has jurisdiction pursuant to 28 U.S.C. §§ 157(b) and 1334. Consideration of the Motion constitutes a core proceeding as defined in 28 U.S.C. § 157(b)(2), The statutory predicates for the relief sought herein are sections 105, and 364 of the Bankruptcy Code and Fed. R. Bankr. P. 2002, 4001, 6004, and 9014 (the "Bankruptcy Rules"). Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

3. A preliminary hearing was held before the Court on January 27, 2011 for consideration of the interim relief requested in the Motion, any responses thereto, and the arguments of counsel.

4. The Debtors have applied to the Court for authority pursuant to Bankruptcy Code § 364, to approve Debtors' continued use of an existing credit agreement with True North as debtor-in-possession financing, pursuant to the terms and conditions of (a) the Secured Promissory Note (the "Note", attached to the Motion as Exhibit A); (b) the Security Agreement (the "Security Agreement", attached to the Motion as Exhibit B, and, together with the Note, the "DIP Facility") (amounts advanced under the DIP Facility are referred to as, the "DIP Loan"); and (c) this Order. A summary of the material terms of the DIP Facility include, but are not limited to:

(a) Credit Amount and Availability: The DIP Facility provides for maximum advances of up to $625,000 in principal, including the Pre-Petition Advance. The amount available to the Debtors post-petition will be approximately $425,000.

DB04/810420.0002/3907079.2 DD02

(b) Use of Proceeds: The proceeds of the loans by True North shall be used to fund general operations of the Debtors in accordance with, and limited to the items set forth in, the budget (the "Budget") approved by True North. The proceeds may also be used to pay costs and expenses of the Debtors' respective legal, financial and other advisors incurred prior to the Petition Date.

(c) Interest: Advances made under the DIP Facility bear a non-default fixed interest rate of 8.6%.

(d) Funding Fee: Upon each advance, a funding fee of equal to 1.0% of all disbursements made thereunder (the "Funding Fee") will be deemed additional principal under the Note and payable in accordance with the terms thereof.

(e) Liens and Priorities: Amounts payable under the DIP Facility shall be secured by a perfected lien on the "DIP Collateral," consisting of: the Debtors' personal and fixture property of every kind and nature including, without limitation, all furniture, fixtures, equipment, raw materials, inventory, or other goods, accounts, contract rights, rights to the payment of money, insurance refund claims and all other insurance claims and proceeds, tort claims, chattel paper, documents, instruments, securities and other investment property, deposit accounts and all general intangibles including, without limitation, all tax refund claims, license fees, patents, patent applications, trademarks, trademark applications, trade names, copyrights, copyright applications, rights to sue and recover for past infringement of patents, trademarks and copyrights, computer programs, computer software, engineering drawings, service marks, customer lists, goodwill, and all licenses, permits, agreements of any kind or nature pursuant to which any Debtor possesses, uses or has authority to possess or use property (whether tangible or intangible) of others or others possess, use or have authority to possess or use property (whether tangible or intangible) of the Debtors, and all recorded data of any kind or nature, regardless of the medium of recording including, without limitation, all software, writings, plans, specifications and schematics, which lien in junior to existing liens on the DIP Collateral that are valid and perfected as of the Petition Date.

(f) Payments: The loan does not require monthly or periodic payments, and instead provides for a balloon payment of all outstanding principal and interest owing under the Note due the earlier of: (i) 180 days from the effective date of the Note; (ii) the effective date of the Debtors' plan of reorganization; (iii) the closing date of any sale of substantially all of Debtors' assets pursuant to section 363 of the Bankruptcy Code; or (iv) the conversion or dismissal of the Debtors' bankruptcy cases. Notwithstanding the foregoing, the Debtors have the option, but are not required, to make monthly or interim payments under the DIP Facility until its maturity.

5. Due to certain delays beyond the control of the Debtors in bringing these Chapter 11 Cases, prior to the Petition Date, the Debtors were required to take a pre-petition advance from True North under the Note and the Security Agreement in the amount of $200,000 (the "Pre-Petition Advance"). True North made the Pre-Petition Advance on the express condition that it would remain

part of the DIP Facility. The Motion seeks, in part, relief in the form of an Order granting True North an allowed secured claim in the amount of the Pre-Petition Advance with the same priority of any advances under the DIP Facility made post-petition, which relief is not sought on an interim basis and not presented for consideration before this Court at the hearing held January _____27, 2011.

6. Notwithstanding the Pre-Petition Advance, immediate need exists for the Debtors to obtain additional funds and financial accommodations with which to continue their operations, meet their payroll and other necessary, ordinary course business expenditures, and administer and preserve the value of the estate. The ability of the Debtors to pursue their goal of consummating the proposed sale of their assets to the Proposed Purchaser (or a successful overbidder) requires the availability of additional working capital, the absence of which would harm the Debtors, their estates and their creditors. It is vital that the Debtors maintain the ability to finance their chapter 11 proceedings in order to preserve and maintain value.

7. The Debtors seek interim relief from this Court in the form of an Order allowing Debtors immediate access to the remaining funds available in the DIP Facility, in accordance with the rights, priorities, and protections provided in this Order.

8. The Debtors are not able to obtain unsecured credit under section 364(b) of the Bankruptcy Code, and could only obtain credit under the terms and conditions set forth in this Order and in the DIP Facility.

9. The relief requested in the Motion is necessary, essential and appropriate for the continued preservation of the Debtors' property.

10. Authorization to borrow under the DIP Loan contemplated by the DIP Facility is in the best interests of the Debtors' estates.

11. The terms and conditions of the DIP Facility are fair and reasonable and the best available under the circumstances and reflect the Debtors' prudent business judgment consistent with their fiduciary duties, and is supported by reasonably equivalent value and consideration.

12. The DIP Facility was negotiated by proposed counsel for the Debtors and counsel for True North. Credit to be extended under the DIP Facility will be so extended in good faith, in

consequence of which True North is entitled to the protection and benefits of § 364(e) of the Bankruptcy Code.

13. Due and appropriate notice of relief sought by the Motion and the hearing(s) with respect to this Order, was given by electronic mail, facsimile and/or overnight delivery to the following parties, or, in lieu thereof, their counsel: (i) the Office of the United States Trustee; (ii) all parties known or believed to assert a secured claim against any of the Debtors'; (iii) counsel to True North; and (iv) those parties requesting notice pursuant to Bankruptcy Rule 2002. Such notice constitutes good and sufficient notice of the Motion and hearing(s) under the circumstances in accordance with Bankruptcy Rules 4001(b), 4001(c), the Local Bankruptcy Rules and section 102(1) of the Bankruptcy Code as required by section 364 of the Bankruptcy Code in light of the nature of the relief requested in the Motion.

NOW THEREFORE, the Court having considered the DIP Facility, the Motion, and the evidence submitted, and arguments of counsel, at the hearing(s) with respect to the Motion on January 27, 2011, (the "Hearing"); and in accordance with Rules 2002, 4001(b), (c), and (d), and Rule 9014 of the Bankruptcy Rules and the Local Rules of the Bankruptcy Court; and it appearing that approval of the relief requested in the Motion is otherwise is fair and reasonable and in the best interests of the Debtors, their estates and their creditors, and is essential for the continued administration of the Debtors' Chapter 11 Cases; and after due deliberation and consideration, and for good and sufficient cause appearing therefore,

IT IS ORDERED that:

(i) The Motion and the terms and conditions of the DIP Facility are hereby approved on an interim basis with respect to all post-petition amounts borrowed under the DIP Facility and the Debtors are authorized to (a) borrow funds and obtain extensions of credit up to a maximum of $425,000 in post-petition principal advances from True North pursuant to the terms and conditions of the DIP Facility and this Order; (b) continue the DIP Facility; and (c) use the proceeds of the DIP Loan in a manner consistent with the DIP Facility for (i) working capital; (ii) other general corporate purposes of the Debtors; (iii) payment of any related transaction costs, fees and expenses; and (iv) the costs associated with the administration of the Cases (all borrowings and extensions of credit collectively, the "DIP Loan Obligations"); ***provided, however***, that this authorization is without prejudice to the Debtors' right to seek the approval of the Court by further order for additional borrowings and extensions of credit from True North on the same terms and conditions.

(ii) The Debtors are hereby authorized and directed to do and perform all acts and to make, execute and deliver all instruments and documents that may be required or necessary for the performance by the Debtors under the DIP Facility.

(iii) True North is hereby granted an allowed secured claim in an amount equal to the post-petition advances made under the DIP Facility, including amounts attributable to the principal by the Funding Fee, together with all additional interest, costs and fees due thereunder, which claim is secured by a lien on the DIP Collateral, junior to existing liens on the DIP Collateral that are valid and perfected.

(iv) True North shall be entitled to the benefits and protections of this Order, including the protections afforded pursuant to Bankruptcy Code § 364(e), with respect to all post-petition advances and/or financial accommodations made by True North to or for the benefit of the Debtors pursuant to this Order. Pursuant to the provisions of Bankruptcy Code § 364(e), the secured status of True North's post-petition advances shall be binding on the Debtors or any successor trustee or trustees even if this Order is reversed or modified on appeal.

(v) This Order shall be binding upon and inure to the benefit of True North, the Debtors and their respective successors and assigns, including, without limitation, any trustee, responsible officer, examiner, estate administrator or representative, or similar person appointed in a case for the Debtors under any chapter of the Bankruptcy Code.

(vi) The terms and conditions of this Order shall be immediately effective and enforceable upon its entry and there shall be no stay of execution or effectiveness of this Order. Specifically, pursuant to this Order, the fourteen (14) day automatic stay period of Bankruptcy Rule 6004 is expressly inapplicable to this Order and the transactions, including, without limitation, transfers contemplated hereby, and accordingly, this Order shall become operative immediately upon entry on the docket.

(vii) The provisions of this Order and any actions taken pursuant to this Order shall, to the extent permitted by applicable law, survive entry of any orders which may be entered confirming any plan of reorganization or which may be entered converting these bankruptcy cases from Chapter 11 to Chapter 7 of the Bankruptcy Code. The terms and provisions of this Order, as well as the secured claims granted by this Order, shall (to the extent permitted by applicable law) continue in this or any successor case under the Bankruptcy Code and shall continue notwithstanding any dismissal of the Debtors' cases, and such claims shall maintain their priority as provided by this Order until the DIP Loan Obligations are satisfied in full.

(viii) To the extent that any of the provisions of this Order shall conflict with any order of the Court authorizing the Debtor to continue the use of pre-petition bank accounts, cash management systems and/or business forms, or any similar orders, then this Order is deemed to control and supersede the conflicting provision(s) in said orders.

(ix) True North may provide funding to the Debtors by way of advances to the Debtors up to the full amount of the DIP Facility in exchange for the Debtors' issuance of one or more promissory notes, each of which additional notes, if any, shall be on the same terms and conditions as the Note (except as to amount) and therefore shall expressly incorporate the terms set forth herein.

(x) True North's right to decline to provide advances to the Debtors under the DIP Facility, in its sole and absolute discretion, is hereby preserved.

(xi) True North and the Debtors may amend, modify or supplement any of the provisions of the DIP Facility (each a "Modification" and, collectively, the "Modifications") without further order of the Court, provided that (a) such Modification is not material, (b) the Office of the United States Trustee and the official committee of unsecured creditors appointed in the Chapter 11 Cases, if any, provide their written consent in advance, which consent shall not be unreasonably withheld, and (c) notice of such Modification is filed with the Court at least two business days prior to the proposed effective date thereof***, provided, however***, that filing with the Court shall not be required with respect to any Modification that in addition to being non-material is also technical and/or ministerial. The foregoing provisions shall not apply to any forbearance or waiver by True North with respect to any Events of Default which may have occurred (and the foregoing provisions shall not limit or impair True North's absolute discretion to agree to such forbearance or waiver), provided that such forbearance or waiver is not itself conditioned upon the Debtors' agreeing to any Modification that is material.

(xii) This Court shall retain jurisdiction over any disputes related to or arising from this Order, including but not limited to any action, suit, or proceeding for the interpretation and enforcement of the DIP Loan, the DIP Obligations, or the DIP Facility, or the collection of any amount allegedly payable pursuant to any of the foregoing documents.

(xiii) A final hearing on the remaining issues presented in the Motion shall be held on __ _____________, 2011, at __________.m.

DATED AND SIGNED ABOVE.

Aerotek
3689 Collection Ctr Dr
Chicago IL 60693

AIGB Group Inc
630 N Coit Rd #2200
Richardson TX 75080

Ajilon
Dept Ch 14032
Palatine IL 60055

Alsace LLC
23974 Aliso Creek Rd #408
Laguna Beach CA 92677

Anderson, Jeffrey
8234 E Posada Ave
Mesa AZ 85212

Arete Holdings, LCL
6363 N Sc ottsdale Rd #395
Scottsdale AZ 85250

Brighttree
1735 N Brown Rd #500
Lawrenceville GA 30043

Boxwood Technology Inc
11350 McCormick Rd #101
Cockeysville-Hunt Valley MD 21031

Brandon Trans. Service or Liz Brandon
15931 S Merrylee Dr
Oregon City OR 97045

Brown & Fortunato PC
905 S Fillmore #400
Amarillo TX 79105

CareFusion Corporation
PO Box 75604
Cleveland OH 44101-4755

CBiz Accounting Tax & Advisory Servic
File 50035
Los Angeles CA 90074-0034

Chapman & Chapman LLC
240 Stengar Ln
Roseburg OR 97470

Chen, Ernest
16201 S 29th Dr
Phoenix AZ 85045

Cisco Systems Capital CRP
PO Box 41602
Philadelphia PA 19101-1602

City of Scottsdale
PO Box 1586
Scottsdale AZ 85252

Centers for Medicare & Medicaid Svc
c/o Paul Bullis, Asst Atty Gen
40 N Central Ave #1200
Phoenix AZ 85004

CP/Ipers Prince Forum LLC
PO Box 100794
Pasadena CA 91189

CT Corporation
PO Box 4349
Carol Stream IL 60197

Dawley, Paul
19743 W Hammond Dr
Buckeye AZ 85326

Dell Financial Services
4307 Collection Center Dr
Chicago IL 60693

Dell Marketing LP
PO Box 802816
Chicago IL 60680

Doctors Company, The
PO Box 52780
Phoenix AZ 85072

Eckert Seamans Cherin & Mellott LLC
600 Grant St 44th Fl
Pittsburgh PA 15219

Embla Systems Inc
Dept 1881
Denver CO 80291-1880

Emdeon Business Service
12016 Collections Center Dr
Chicago IL 60693-0120

Estrella Medical Plaza 1 LLC
9401 W Thunderbird Rd #200
Peoria AZ 85381

Evo Medical Solutions
26378 289th P l
Adel IA 50003-8021

Fisher & Paykel Healthcare
12724 Collections Center Dr
Chicago IL 60693

Franklin Commons LLC
601 SE 117th Ave #200
Vancouver WA 98683

Greenberg Traurig
2375 E Camelback Rd #700
Phoenix AZ 85016

High, Randolph P
428 E Thunderbird Rd #445
Phoenix AZ 85022

HTA - SC Royal Oaks LLC
PO Box 749477
Los Angeles CA 90074-9477

Huron Consulting Services LLC
4795 Paysphere Cir
Chicago IL 60674

ImageFIRST - Phoenix
PO Box 18974
Phoenix AZ 85005-8974

Inhale LLC
5235 N Mesquite Canyon Pl
Tucson AZ 85749

Insight Global Finance
PO Box 371992
Pittsburgh PA 15250-7992

Jurisdiction D DME Mac
PO B ox 6727
Fargo ND 58108-6727

K&L Gates LLP
One Lincoln St
Boston MA 02111-2950

Lincoln National Life Ins Co
PO Box 0821
North Suburban Fac IL 60132

Loftus, Sharon M., Esq.
166 Hickory Heights Dr
Bridgeville PA 15017

Long Realty Company
900 E River Rd
Tucson AZ 85718

Maricopa County Treasurer
PO Box 78574
Phoenix AZ 85062

Medicare
PO Box 6727
Fargo ND 58108-6727

MVAP Medical Supplies Inc
1415 Lawrence Dr
Newbury Park CA 91320

ODS Companies, The
PO Box 4030
Portland OR 97208

Office Depot
PO BOX 70025
Los Angeles CA 90074-0025

On Point Marketing Solutions
15816 N Greenway Hayden Lp #500
Scottsdale AZ 85260

Pacific Source Health Plans
PO Box 7068
Eugene OR 97401-0068

Parcel Port
PO Box 2007
North Haven CT 06473

PMT Inc
7471 E Camino Rayo del Luz
Scottsdale AZ 85266

Powell Professional Center
PO Box 2968
Portland OR 97208

Regence BC BS OR
P Box 91048
Seattle WA 98111

Resmed
Lockbox 51054
Los Angeles CA 90051

Respironics Inc
PO Box 405740
Atlanta GA 30384-5740

Richardson Dr Reo, LLC
14785 Preston Rd #850
Dallas TX 75254

R.O.I. Properties
7310 N 16th St #180
Phoenix AZ 85020

Roscoe Medical
PO Box 73743
Cleveland OH 44193

RYJE
1230 Marine Dr #307
Astoria OR 97103

Slumber LLC
5235 N Mesquite Canyon Pl
Tucson AZ 85749

Smith, Barbara S
18410 N 27th Ave #118
Phoenix AZ 85053

Sprint
PO Box 219100
Kansas City MO 64121-9100

STS Properties LLC
710 Pena Ln
Lake Havasu City AZ 86406

Tricare West
PO Box 77028
Madison WI 53707

UPS
PO Box 894820
Los Angeles CA 90189-4820

VGM Financial Services
PO Box 78523
Milwaukee MI 53278-0523

VGM Group Inc
PO Box 2817
Waterloo IA 50704-2817

Willis of Arizona Inc
PO Box 730054
Dallas TX 75373-0054

Zirmed
1311 Solutions Ctr
Chicago IL 60677